

## Beneficial Environmental Projects

### INTRODUCTION

The Department of Environmental Quality (DEQ) has the responsibility for protecting public health and the environment by enforcing the state's environmental laws and regulations. DEQ has several enforcement options that are available through either the Louisiana Environmental Quality Act or by the supporting regulations. Among others, these options include the issuance of compliance orders and administrative penalties. Compliance orders are generally issued when DEQ has determined, based on existing evidence, that a violation(s) has occurred and that the responsible party must make specific changes, identified in the enforcement action, to correct those violation(s).

Administrative penalties are proposed only after the Department has carefully reviewed the circumstances surrounding the alleged violations and has determined that a penalty is appropriate. By law, there are nine factors pertaining to the specific violation and the violator that must be considered before a penalty can be issued by the Department. DEQ has recently finalized new reg-

ulations that allow the inclusion of beneficial environmental projects (BEPs) into the settlement of violations or penalty assessments. The BEP procedures are consistent with applicable federal laws, regulations and policies. LAC 33:I. Chapter 25 (adopted as a Department regulation on August 20, 2000) defines BEPs as projects that provide for environmental mitigation which the defendant/respondent is not otherwise legally required to perform, but which the defendant/respondent agrees to undertake as a component of a settlement of a violation or penalty assessment. By negotiating these BEPs, DEQ can further its goal of protecting and enhancing the public health and environment of the state. These projects must go above and beyond mere compliance. DEQ will not approve a BEP if the Respondent has to undertake the project under existing regulations. Additionally, all settlements of penalty actions are publicly noticed so that affected communities will know about them and have a chance to provide input and comments about the projects prior to their approval.

### CATEGORIES OF BEPS

LAC 33:I. Chapter 25, which is consistent with the EPA's Supplemental Environmental Projects Policy regarding eligible projects, mandates that all BEPs fall into one or more of the following eight categories:

- **Public Health** – A public health project provides diagnostic, preventative, and/or remedial components of human health care that is related to the actual or potential damage to human health caused by a violation of environmental law or mismanagement of substances containing constituents detrimental to human health.

- **Pollution Prevention** – A pollution prevention project is one that results in an overall decrease in the amount and/or toxicity of the pollution released to the environment, not merely a transfer of pollution among media.

- **Pollution Reduction** – A pollution reduction project employs recycling, treatment, containment, or disposal techniques to pollutants that have already been generated or released and results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment by an operating business or facility by a means which does not qualify as "pollution prevention."

- **Environmental Restoration and Protection** – An environmental restoration and prevention project is one that goes beyond repairing the damage caused by a violation to enhance the condition of any ecosystem or geographic area.

- **Assessments and Audits** – There are four types of assessments/audits that are acceptable: pollution prevention assessments, site assessments, environmental management system audits, and compliance audits.

- **Environmental Compliance Promotion** – An environmental compliance promotion project provides training or technical support to identify, achieve and maintain com-

pliance with applicable statutory and regulatory requirements.

- **Emergency Planning, Preparedness, and Response** – An emergency planning and preparedness project provides assistance to a responsible state or local emergency planning, preparedness, or response entity.

- **Other projects** – These are projects determined by the department to have environmental merit that do not fit within at least one of the seven categories above and are otherwise consistent with the intent of these rules.

### AN EXAMPLE OF A RECENT BEP

During an inspection, DEQ discovered that Company X located in Louisiana had allegedly violated the regulations by exceeding the permissible emissions limits for nitrogen oxide, sulfur dioxide, carbon monoxide, and particulate matter, in addition to violating the hours of operation allowed for specified kilns. After reviewing the circumstances surrounding the alleged violations, DEQ determined that a penalty was appropriate, and notified the company (via an enforcement action called a Notice of Potential Penalty) that the issuance of a penalty assessment was being considered for the alleged violations. Subsequently, the Department issued the Penalty Assessment alleging violations of law and assessing a civil penalty in the amount of \$25,000.00. Company X denied it committed any violations or that it was liable for any fines or penalties. At this point, DEQ took a proactive stance. Instead of standing firm on the \$25,000.00 penalty while Company X denied all allegations (which could have resulted in an extended period of costly litigation), the Department began negotiating a settlement that would result in an enhancement to the environment and the public health of Louisiana. Despite the fact that the company denied all allegations, a settlement agreement was reached. The company agreed to pay the Department \$10,000.00 in addition to performing a BEP that would entail extensive modifications to the facility's dust control system. These modifications, which included an upgraded water supply and improved water delivery system, would reduce particulate emissions from several sources and was expected to reduce dust emissions by as much as 97% from some of the sources. The estimated cost of this BEP was determined to be \$65,277.00. What it came down to was a trade off. Instead of the original penalty assessment of \$25,000.00 being paid to the DEQ and going into the Hazardous Waste Site Cleanup Fund, the Department successfully negotiated a settlement that brought a \$10,000.00 penalty accompanied by a BEP estimated to be valued at \$65,277.00 that should appreciably improve the ambient air quality in the surrounding area.

### A FINAL NOTE

DEQ not only strives to protect the public health of Louisiana citizens and their environment, but also strives to enhance public health and the environment by strictly enforcing the environmental requirements in the state. DEQ believes the addition of this new BEP regulation in the enforcement "tool box" will greatly enhance the effectiveness of the overall enforcement process. BEPs provide enhancements that exceed reasonable precautions and go above and beyond the regulatory requirements. Using BEPs in these negotiations can expedite the settlement process as well as result in environmentally related improvements that probably would not have otherwise occurred. In addition, DEQ can facilitate improvements in areas of the state which the Department feels have the greatest need.

Sample BEPs listed on page 15.



Pictured at left, Jason Richard, an Environmental Scientist in DEQ's Surveillance Division, stands by an emissions stack that houses one of three new catalytic converters designed to reduce nitrogen oxide at a plant. The converter represents part of a BEP settlement to reduce nitrogen oxide emissions above and beyond what is required by law. Nitrogen Oxide is one of the primary ingredients in the production of harmful ozone that produces damaging health effects in high concentrations.